

1 David N. Chandler, Sr. SBN 60780  
David N. Chandler, Jr. SBN 235427  
2 DAVID N. CHANDLER, p.c.  
1747 Fourth Street  
3 Santa Rosa, CA 95404  
Telephone: (707) 528-4331

4 Attorneys for Debtor

5 UNITED STATES BANKRUPTCY COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

7 IN RE: CASE No. 10-12153

8 CHAPTER 11

9 PROWEST MEDIA CORPORATION,

MOTION FOR PROTECTIVE ORDER;  
DECLARATION OF DAVID N. CHANDLER;  
10 MEMORANDUM OF POINTS AND  
AUTHORITIES

11 Debtor. /

Date: October 1, 2010

12 Time: 9:00 a.m.

Place: 99 South E St.

13 Santa Rosa, CA

14 TO: HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY JUDGE:

15 PROWEST MEDIA CORPORATION, Debtor herein, hereby moves the  
16 above entitled Court for a Protective Order relating to the Order of  
17 Examination entered August 27, 2010 on the grounds that the Order is  
18 overbroad overreaching and exceeds the scope of Rule 2004.

19 The Motion is made on the grounds that the creditor is (1)  
20 attempting to utilize Rule 2004 to circumvent a pending civil action  
21 brought by the creditor to foreclose on the collateral; and (2) the  
22 scope of the Order exceeds the specific provisions of Rule 2004.

23 Said Motion is made and based hereon, on the appended  
24 Declaration of David N. Chandler and the Memorandum of Points and  
25 Authorities, and on the pleadings and records on file herein.

26 Dated: 9/3/10

DAVID N. CHANDLER, p.c.

27 By: /s/ David N. Chandler

28 DAVID N. CHANDLER,  
Attorney for Debtor

DECLARATION OF DAVID N. CHANDLER

I, David N. Chandler, declare and say:

1. That if called as a witness, I am competent to testify to the within matters from my own knowledge.

2. That I am attorney for the Debtor in the above captioned matter and attorney for the Plaintiff in A.P. No. 10-1080.

3. The said Adversary Proceeding is a proceeding brought to determine the extent and value of the lien pursuant to 11 U.S.C. Section 506. There is a dispute as to the breadth of the security interest held by Jim French Studio.

4. Discovery has not been propounded in said Adversary Proceeding by either party.

5. Pending in San Francisco Superior Court is Case No. CGC 09-487213, entitled "Jim French Studios v. ProWest". In said case, the secured creditor is attempting to foreclose its security interest in the collateral which the creditor is seeking to sequester by manipulation of Rule 2004.

6. The Debtor has pending in the Superior Court case, a cross complaint based upon the failure of Jim French Studio to deliver a substantial portion of the images which it was contractually obligated to deliver upon close of the sale.

7. Jim French Studio obtained an Order for Relief from Stay to foreclose its security interest in the collateral. Rather than bringing the matter to trial in the Superior Court, the creditor proposes to descend on the Debtor and conduct a search of the premises under the guise of FRBP Rule 2004.

8. The Debtor does not oppose producing the documents requested so far as same can be ascertained from the description

1 provided. The electronic records will be produced as well.

2 9. The creditor proposes to conduct a search of the business  
3 premises and residence of Debtor's officers and a storage facility  
4 maintained by the Debtor. The Order does not provide who may enter  
5 and the extent of the search or even what is being searched for.

6 10. A Rule 2004 Order is available for testimony and  
7 documents. Debtor does not oppose providing testimony and  
8 documents.

9 Executed under penalty of perjury this 3<sup>rd</sup> day of September,  
10 2010 at Santa Rosa, California.

11  
12 /s/David N. Chandler  
13 David N. Chandler  
Attorney for Debtor

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 1. Federal Rules of Bankruptcy Procedure Rule 2004(a)  
16 provides that the Court, on motion of any party, may order the  
17 examination of any entity. Subsection (c) makes provision for  
18 compelling attendance at such examination and production of  
19 documents. The Rule makes no provision for a search to be conducted  
20 of premises under the debtor's direction or control. The Order  
21 exceeds the Rule.

22 2. Inspection of premises is available under FRCP and the CCP  
23 where the premises are relevant or will likely lead to admissible  
24 evidence in the proceeding or contested matter. Here, the secured  
25 creditor seeks to conduct a house to house search presumably for its  
26 collateral. There is no authority provided or available upon which  
27 such a search could be authorized under Rule 2004.

28 3. Rule 2004 is not available as to any issue for which the

1 FRCP is applicable based upon a pending contested proceeding. The  
2 secured creditor has set forth no authority for conducting a search  
3 of the premises under any rule, but submits the Motion as if the  
4 inspection is to be of "premises" rather than contents.

5 4. While the scope of Rule 2004 is broad, it cannot be used  
6 to harass, abuse or inquire as to irrelevant matters. See, In re  
7 Lufkin, 255 B.R. 204 (Bkctcy. E.D.Tenn, 2000). The scope is set  
8 forth in Rule 2004(b).

9 5. Since the Debtor has leased the premises, perhaps a walk  
10 through inspection under specific restrictions would be appropriate  
11 for the general appraisalment of the premises. The creditor will  
12 urge the Court that it is entitled under this Order to copy hard  
13 drives, review files, inspect contents of storage containers and  
14 files, look under the beds and otherwise inspect the contents of the  
15 premises at its will. FRBP Rule 2004 does not provide for such a  
16 search of the premises.

17 Dated: 9/3/10

Respectfully submitted,

18 DAVID N. CHANDLER, p.c.

19  
20 By: /s/ David N. Chandler  
21 DAVID N. CHANDLER,  
22 Attorney for Debtor  
23  
24  
25  
26  
27  
28